IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.9411 of 2007

Bank of Baroda ..Petitioner

vs.

Prem K.Java and ors. ..Respondents

Shri V.Y.Sanglikar for petitioner.
Shri P.K.Vyas for respondent no.2.

CORAM: S.C.DHARMADHIARI J.
20th December, 2007

P.C.

1. This writ petition is directed against the order of the Court below wherein the application made by the petitioner's Bank has been rejected. The suit was decreed in favour of the respondent and against the petitioner Bank on 4th April, 2007. The premises admeasure about 7000 sq.ft. at Andheri (East), Mumbai. It is not as if the Bank has accepted the decree and surrendered possession. The Bank preferred appeal and in appeal it applied for interim stay. However, it appears, that before the stay application could be fully heard, the possession has been taken away from the petitioner Bank. There is an order passed on 5th October, 2007 wherein it is recorded that exparte ad-interim stay to the execution is granted till 8th October, 2007 at

11.00 a.m. with notice to the respondent before me. 2. It is the case of the Bank that before this order could continue further the possession of the premises was taken away by execution of the decree. Ad-interim order was passed on 4th October, 2007. However, before the order could take effect the premises were taken over by the respondent.

3. Thus, ad-interim stay granted upto 8th October, 2007 became infructuous. In such circumstances, the Bank applied for alternate relief namely to allow it to have access to the premises because it is a record room where the record & documents of 105 branches of the Bank of Baroda are stored. Even that application is not being considered and repeated adjournments were sought is the grievance before me. The matter was placed Yesterday and was adjourned till today. Yesterday and today morning initially none appeared for the respondents despite due intimation from the petitioner Bank. In the afternoon sessions, the landlord appeared through their Advocate who makes a without prejudice statement that the landlord will have no objection if the petitioner Bank is granted access to the said premises during some fixed

hours. The respondents have further agreed to open the premises during such hours to enable the Bank to have access thereto and remove so also store the record.

4. This arrangement is accepted by the petitioner Bank and accordingly without prejudice to their rights and contentions in the pending stay application so also pending appeal, this arrangement shall continue till stay application is decided which is directed to be heard and disposed of by the Appellate Bench on or before 31st January, 2008. The lower Appellate Court shall not be influenced by any observations made in this order or the earlier order. Needless to stay that to enable the petitioner Bank to have access to the premises so also keep and store the record and documents, the premises shall be kept open on every working day between 10 a.m. till 5.30 p.m. The representative of the decree holder and the petitioner Bank shall remain present whenever the premises are opened and locked again in the evening. This statement is made by respondent no.2 who is present in Court through his Advocate. All contentions of both sides are kept open. Petition is disposed of.

(S.C.DHARMADHIKARI J.)